CLERK'S COPY.

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 559

ARTHUR GOOCH

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

FILED OCTOBER 29, 1935

SUPREME COURT OF THE UNITED STATES

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No. 559

ARTHUR GOOCH

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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1 In United States Circuit Court of Appeals for the Tenth Judicial Circuit

[File endorsement omitted.]

No. 1305

ARTHUR GOOCH, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Oklahoma

CERTIFICATE OF QUESTIONS OF LAW

Filed Oct. 8, 1935

Statement

Gooch was convicted and sentenced to be hanged under an indictment charging that he, with one Nix, kidnaped two officers at Paris, Texas, "for the purpose of preventing his (Gooch's) arrest by the said peace officers in the State of Texas", and transported them in interstate commerce from Paris, Texas, to Pushmataha County, Oklahoma, and at the time of the kidnaping did bodily harm and injury to one of the officers from which bodily harm the officer was suffering at the time of his liberation by Gooch and Nix in Oklahoma.

The proof supports the charge. It established these facts: Gooch and Nix, while heavily armed, were accosted by the officers at Paris, Texas. To avoid arrest, Gooch and Nix resisted and disarmed the officers, unlawfully seized and kidnaped them and transported them by automobile from Texas to Oklahoma, and liberated them in the latter State. During the time Gooch and Nix were kidnaping the officers they inflicted serious bodily injury upon one of the officers, from which injury he was suffering at the time of such liberation in the State of Oklahoma.

2 *Questions*

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise", in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under Section 408a, supra, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnaper?

ORIE L. PHILLIPS,
GEO. T. MCDERMOTT,
SAM G. BRATTON,
Judges of the United States Circuit Court of Appeals Sitting in Said Case.

In the United States Circuit Court of Appeals for the Tenth Judicial Circuit

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Judicial Circuit, do hereby certify that the foregoing is the original signed certificate of questions of law filed and entered of record in said cause on the 8th day of October 1935, in case No. 1305, Arthur Gooch, appellant, versus United States of America, appellee.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit at my office in the city of Denver, Colorado, on the eighth day of October, A. D. 1935.

[SEAL]

ALBERT TREGO,
Clerk United States Circuit Court of Appeals for the Tenth Circuit.
By H. A. MCINTYRE,
Deputy Clerk.

(Endorsement on cover:) Enter Arthur Gooch, pro se. In forma pauperis. File No. 40113. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 559. Arthur Gooch vs. The United States of America. Certificate. Filed October 29, 1935. Term No. 559 O. T. 1935.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 559

ARTHUR GOOCH

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF ARTHUR GOOCH ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

W. F. RAMPENDAHL,
CHAL S. WHEELER,
E. M. FRYE,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

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No. 559

ARTHUR GOOCH

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF ARTHUR GOOCH ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

This case comes to this Court by virtue of the action of the Circuit Court of Appeals for the Tenth Circuit in certifying two questions to this Court.

Jurisdiction.

The sentence and judgment in the District Court below were entered on June 19, 1935 (R. 28). The Circuit Court of Appeals on October 8, 1935, certified two questions on the construction of the statute involved here to this Court and the certificate was filed in this Court on October 29, 1935. On November —, 1935, this Court entered an order

accepting jurisdiction on the questions certified under the provisions of 28 U. S. C. A., Sec. 346.

Questions Presented.

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise" in the Act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under Section 408a, *supra*, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnapper?

Statute Involved.

Section 408a, Title 18 U. S. C. A., provides:

> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: Provided that the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.

Statement.

The indictment, omitting formal parts, reads as follows:

"And the Grand Jurors, aforesaid, upon their oaths aforesaid, do find, present and charge that, on or about the 25th day of October, 1934, the said Arthur Gooch whose more full true and correct name is at this time to the Grand Jurors unknown, hereinafter referred to as defendant, did wilfully, wrongfully, unlawfully and feloniously, at Paris in the State of Texas, seize, kidnap, abduct, carry away and hold R. N. Baker and H. R. Marks, whose more full, true and correct names are at this time to the Grand Jurors unknown, both of whom at said time were peace officers in the State of Texas, a more accurate description of their official character being at this time to the Grand Jurors unknown, for the purpose of preventing his arrest by the said peace officers in the State of Texas; and did then and there wilfully, wrongfully, knowingly, unlawfully and feloniously transport and cause to be transported the said R. N. Baker and H. R. Marks, by threats and force of arms, against their will, in interstate commerce, overland by means of an automobile, a more accurate description of which is at this time to the Grand Jurors unknown, from the City of Paris in the State of Texas to a place on the highway at or near Cloudy in Pushmataha County, in the Eastern District of Oklahoma and within the jurisdiction of this Court; and at the time of the seizing, kidnapping, abducting and carrying away of the said R. N. Baker and H. R. Marks, and the transportation of said persons from the State of Texas into the Eastern District of Oklahoma, as aforesaid, in interstate commerce, that the said defendant, acting with one Ambrose Nix, who at all times during the commission of the crime aforesaid was present, participating in all the acts above set forth, and aiding and abetting the said defendant in all of said acts, did bodily harm to one of said kidnapped persons aforesaid, to-wit: R. N. Baker, by

forcing him, by force and violence, through the glass of a showcase at the filling station in Paris, Texas, where the said R. N. Baker and H. R. Marks were kidnapped as aforesaid, a more accurate description of said filling station being at this time to the Grand Jurors unknown, and cutting the said R. N. Baker and causing him to be cut on his left hip on the glass in said showcase, from which physical injury and harm the said R. N. Baker was suffering at the time he was liberated by the said defendant in the Eastern District of Oklahoma, as aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America."

A brief summary of the evidence is as follows:

R. N. Baker and H. R. Marks, two police officers of the City of Paris, Texas, were traveling around said city on the morning of November 26, 1934. They observed a car standing in front of what was known as the Clyde Moore filling station. Inside the station an employee of the station was repairing a tire and standing by him as if aiding him in repairing the tire was a man who appeared at the trial as Arthur Gooch. The officers alighted from their car and approached this man and inquired as to the ownership of the car outside. The man replied that it was his. Upon being asked for the title papers the man replied he did not have the papers with him. One of the officers, R. N. Baker then motioned to the other officer, H. R. Marks and Marks moved over towards Gooch. Gooch and Marks grappled with each other and both attempted to draw their guns. Baker attempted to draw his gun; also to go to Marks assistance, when turning his head he saw a man at his left who later proved to be Ambrose Nix. Nix covered Baker with a gun and said "Hands up." Baker continued to try to draw his gun and Nix then jammed his gun in

Baker's back and pushed him against a glass show case in the filling station. The glass in the showcase broke and the broken glass made a cut in Baker's leg. Gooch in the meantime had disarmed his adversary H. R. Marks (R. 43). Gooch and Nix then compelled the officers to get into the police car and they then drove until about nine o'clock that night at which time they reached a point near Snow, Oklahoma (R. 45). Here Gooch and Nix released the officers and drove away (R. 46).

Summary of Argument.

The two questions certified to this Court by the Circuit Court of Appeals should be answered in the negative for the reason that:

(a) The statute herein involved being highly penal any doubt as to its meaning must be resolved in favor of the accused.

(b) Holding an officer to avoid arrest is not within the meaning of the phrase "held for ransom or reward or otherwise" in the Act of Congress of May 18, 1934, 18 U. S. C. A. 408a.

(c) The words "or otherwise" are general words immediately following the specific enumeration "ransom or reward" and in accordance with the rule of *ejusdem generis* draw their meaning therefrom and should be construed to mean acts of a similar or kindred nature.

(d) The words "or otherwise" having been construed by this Court prior to the enactment of the statute involved herein and having a definitely accepted legal meaning, such construction and meaning must be presumed to have been known to Congress at the time of the passage of this act and used accordingly.